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OFFICE OF PETITIONS

In re	:	DECISION ON APPLICATION
Wells, et al.	:	FOR PATENT TERM ADJUSTMENT
Application No. 09/916,213	:	AND NOTICE OF INTENT TO
Filed: July 25, 2001	:	ISSUE CERTIFICATE OF
Patent No. 6,861,167	:	CORRECTION
Issued: March 1, 2005	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT", filed August 10, 2004, and the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)", filed March 30, 2005. Patentees request that the patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred ninety-three (193) days to four hundred ten (410) days.

The application for patent term adjustment is **GRANTED**.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **four hundred ten (410) days**.

On May 10, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date was two hundred thirty-two (232) days. On August 10, 2004, Applicants timely¹ submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance was three hundred twenty-nine (329) days.

No decision on the application for patent term adjustment was rendered. On March 1, 2005, the above-identified application matured into U.S. Patent No. 6,861,167. The patent issued with a Patent Term Adjustment of one hundred ninety-three (193) days.

The Office determined a patent term adjustment of one hundred ninety-three (193) days based on an adjustment for PTO delay of three hundred twenty-nine (329) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), and eighty-one (81) days pursuant to 35 U.S.C. 154(b)(1)(B)(iii) and 37 C.F.R. § 1.703(a)(6), reduced by applicants' delays of ninety-seven (97) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b), and one hundred twenty (120) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(c)(10). The PTO delays of 329 and 81 days have been reviewed and found to be correct. The adjustments of 97 and 120 days are at issue.

Patentees state that the patent is not subject to a terminal disclaimer.

The adjustment of ninety-seven (97) days has been found to be incorrect. A review of the application file reveals that a Notice to File Missing Parts of Nonprovisional Application was mailed on September 4, 2001. Applicants filed a complete response to this notice on November 2, 2001. As this was timely pursuant to 37 C.F.R. § 1.704(b), no applicant delay should have been assessed.

The adjustment of one hundred twenty (120) days has also been found to be incorrect. Pursuant to 37 C.F.R. § 1.704(e), the submission of an application for patent term adjustment will not be considered a failure to engage in reasonable efforts to conclude prosecution of the application.

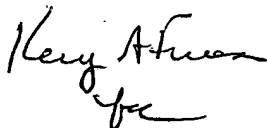
¹ Applicants filed the application for patent term adjustment together with the payment of the issue fee.

In view thereof, issuance of a certificate of correction pursuant to 35 U.S.C. § 254 and 37 C.F.R. § 1.322 is appropriate. The determination of patent term adjustment is four hundred ten (410) days (410 (329 + 89) days of PTO delay, reduced by 0 days of applicant delay).

Receipt is acknowledged of the \$200 fee set forth in 37 C.F.R. § 1.18(e) for the application for patent term adjustment filed August 10, 2004. No fee was required for the application for patent term adjustment filed March 30, 2005, and none has been charged.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 C.F.R. § 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **four hundred ten (410) days**, subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: draft certificate of correction